

**Peninsula General Hospital Medical Center and
Professional Staff Nurses Association. Case 5-
CA-21440**

September 30, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND RAUDABAUGH

On January 14, 1992, Administrative Law Judge Peter E. Donnelly issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, the Charging Party filed a brief in response to the Respondent's exceptions, and the Respondent filed a reply to the answering briefs of the General Counsel and the Charging Party. On December 16, 1992, the Board issued its decision in *Electromation, Inc.*¹ In that decision, the Board discussed in detail the standards for determining whether an employee group is a "labor organization" within the meaning of Section 2(5) of the Act and the kinds of employer conduct that violate Section 8(a)(2) of the Act. The Board thereafter invited the parties to file supplemental briefs concerning the impact, if any, of *Electromation, Inc.*, supra, on the facts of this case. The Respondent and the Charging Party filed supplemental briefs.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rul-

ings,² findings,³ and conclusions⁴ and to adopt the recommended Order.

¹ 309 NLRB 990.

² Although we agree with the judge that the Nursing Service Organization (NSO) is a labor organization within the meaning of Sec. 2(5) of the Act, we find it unnecessary to rely, as did the judge, on the "NSO Update," G.C. Exh. 30.

³ The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's decision, we note that, although there is no evidence to indicate when the election petitions were filed, no exceptions were filed to the judge's finding that the Respondent had knowledge of union activity in January 1990.

The Respondent has excepted to, inter alia, the judge's finding that the Respondent's executive staff received recommendations from each of its members as to wage rates in their respective areas of responsibility. In adopting that finding, we note that Jeff Corrigan, the Respondent's vice president for human resources, testified that the executive staff received input from the various department vice presidents when establishing or improving a wage rate. We further note that one of those executive staff members, Vice President for Nursing Karen Poisker, also functioned as an NSO executive committee member and was active in the reorganization and other NSO affairs.

⁴ We find that the judge's rulings, findings, and conclusions are consistent with the Board's decision in *Electromation, Inc.*, supra. In this regard, Member Devaney concludes, consistent with his position in *Electromation*, supra, and *E. I. du Pont & Co.*, 311 NLRB 893

(1993), that the Respondent usurped the Sec. 7 right of its employees to choose their own bargaining representative and therefore violated Sec. 8(a)(2). Member Devaney rejects the Respondent's citation to his concurring opinion in *Electromation* to support its argument that the Nursing Service Organization was not a labor organization but was solely a management/employee communication device, so that the Respondent's involvement with the NSO did not violate Sec. 8(a)(2). In this regard, he distinguishes the Respondent's use of the NSO after January 1990 and the use made of the safety conferences or "safety pauses" found lawful in *Du Pont*, supra, (majority opinion) and (Devaney, concurring). In conducting the "safety conferences" and "safety pauses," *Du Pont* informed employees that bargaining issues could not be discussed and when bargainable issues arose, they were put on a "bucket" list and were not discussed during the meetings. The respondent in *Du Pont*, supra, made a good-faith effort to avoid discussing bargainable issues and assured employees that the union was their exclusive representative respecting bargainable matters. By contrast, the NSO here was presented to employees as a means of presenting proposals to management and the NSO acted as a representative of the nursing staff in bargaining with management. Vice President for Nursing Poisker, a member of the Hospital's executive staff, also served on the board of the NSO. On February 26, 1990, Poisker wrote to the nursing staff that the NSO was being reorganized as a means for problem solving and decision making regarding, among other things, career paths and clinical ladders, and stated that "I am confident that with the support of all and participation of dedicated representatives from each area, we will have a means to affect change and involve staff in decision making" (emphasis added). At the March 20, 1990 NSO meeting, the area representatives decided that they would speak for and report back to their area nurses. The NSO circulated surveys to the nursing staff, which elicited replies largely concerned with mandatory subjects of bargaining, and Poisker circulated a memo at NSO's October meeting giving the status of the nurses' concerns vis-a-vis management. Finally, Poisker served on the committee for setting up new bylaws for NSO, which were approved by the Hospital's board of trustees.

For the reasons stated in his concurrence in *Electromation*, supra, Member Raudabaugh agrees with his colleague's adoption of the judge's finding that the employee committee involved here was a labor organization within the meaning of Sec. 2(5) of the Act and that the Respondent's conduct in dominating and interfering with the employee committee violated Sec. 8(a)(2). With particular respect to the 8(a)(2) allegations, Member Raudabaugh considers four factors in evaluating the Respondent's conduct: (1) the extent of the Employer's involvement in the structure and operation of the committee; (2) whether the employees, from an objective standpoint, reasonably perceive the employee participation program as a substitute for full collective bargaining through a traditional union; (3) whether employees have been assured of their Sec. 7 right to choose to be represented by a traditional union under a system of full collective bargaining; and (4) the Employer's motives in establishing the employee participation program.

Here, as in *Electromation*, supra, the Respondent dictated the structure of the committee and controlled its operations, the employees could reasonably view the committee as a substitute for collective bargaining through traditional union representation, and the employees were never given assurances of their right to choose collective bargaining through traditional union representation. The judge made no findings regarding the Employer's motives in dominating and interfering with the employee committee, but in light of the other factors present in this case, the lack of a finding of bad motive is not determinative. Accordingly, Member Raudabaugh finds that the Respondent's conduct was unlawful.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Peninsula General Hospital Medical Center, Salisbury, Maryland, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Ronald Broun, Esq., for the General Counsel.

Arthur M. Brewer, Esq. and *Gary Simpler, Esq.*, of Baltimore, Maryland, for the Respondent.

Larry Grosser, of Columbia, Maryland, for the Charging Party.

DECISION

STATEMENT OF THE CASE

PETER E. DONNELLY, Administrative Law Judge. On charges filed by Economic and General Welfare Program of the Maryland Nurses Association,¹ a complaint issued on January 8, 1991, alleging that Peninsula General Hospital Medical Center (the Employer or the Respondent) violated Section 8(a)(1) of the Act by soliciting grievances from employees and promising to attempt to rectify them. The complaint also alleges that Respondent dominated, interfered with, and assisted in the administration and support of a labor organization called the Nursing Service Organization (NSO) in violation of Section 8(a)(1) and (2) of the Act. An answer thereto was timely filed by Respondent. Pursuant to notice, a hearing was held before me on September 17 and 18, 1991. Briefs have been timely filed by General Counsel, Respondent, and Charging Party, which have been duly considered.

FINDINGS OF FACT

I. EMPLOYER'S BUSINESS

The Employer is a Maryland corporation with an office and place of business in Salisbury, Maryland, where it is engaged as a hospital in providing medical and professional care services to the general public. During the preceding 12 months, the Employer, in the course and conduct of its business operations, derived gross revenues in excess of \$50,000, and purchased and received at its Salisbury, Maryland facility products, goods, and materials valued in excess of \$5000 directly from points outside the State of Maryland. The complaint alleges, the Employer admits, and I find that the Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

The complaint alleges, Respondent admits, for the purposes of this case, and I find that the Union is a labor organization within the meaning of Section 2(5) of the Act.

¹ The name of the Charging Party changed and was amended at the hearing to appear as Professional Staff Nurses Association (the Union or the Charging Party).

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. Facts

Respondent Hospital, as noted above, is located in Salisbury, Maryland, where it provides some 383 beds and employs some 1800 employees. Approximately 400 of these employees are registered nurses and 100 are licensed practical nurses.

The NSO has existed since at least 1968. Its membership under bylaws enacted in 1988 consists of "all registered and licensed practical nurses who are employed at Peninsula General Hospital Medical Center." Originally, the NSO was supported by the voluntary dues of the membership, but by 1988, dues contributions had become insufficient to support the NSO. It was then that Karen Poisker, vice president for nursing, submitted as a Hospital budget item \$500 annually for funding the NSO. The NSO has been funded by Respondent in that manner since that time.² At its inception, and for some time thereafter, the NSO was devoted exclusively to the professional and social concerns of its members, apparently not their working conditions. Typically, it sent cards and flowers to members on such events as retirements, births, and the like.

Poisker was first employed by the Hospital in 1975 as a registered nurse and rose through the nursing ranks to her present position as vice president for nursing. Her duties for management include the supervision of all in-patient nursing areas.

It appears that Poisker was and has been, throughout her employment, a member of the NSO. Even after becoming vice president for nursing, Poisker retained her membership in the NSO. In addition to her membership, Poisker is a member of the NSO executive committee, a group that meets to discuss and formulate agendas for the NSO membership meetings. The NSO executive committee consists of four individuals, the two co-chair persons of NSO, the immediate past co-chairman of NSO,³ and the vice president of nursing, Poisker herself. In addition, Poisker was a member of and advisor to the bylaws committee of NSO, a group established to revise the NSO bylaws.

It appears that the character of the NSO was basically unchanged until about November 1989. Poisker became concerned that the NSO was growing less effective and she wanted to rejuvenate it. In this regard, the minutes of the NSO meeting for November 28, 1989, reflect a discussion among the NSO executive committee, including Poisker, to the effect that to promote better communication, an employee representative from each nursing area should be chosen as a representative to attend NSO meetings and report back to the staff of the area represented. According to the minutes:

² Poisker is one of eight individuals on the Hospital's executive staff. Those individuals are the president of the Hospital, consultant for medical affairs, vice president for operations, vice president for finance, vice president for nursing, vice president for support services, vice president for professional services, and vice president for human resources. It is the function of the executive staff to formulate a Hospital budget for each fiscal year. This involves input from each of the executive staff, including wage recommendations for their areas of responsibilities.

³ The co-chairs have staggered terms.

Ms. Poisker also stated that the main concern of NSO is that we have major concerns throughout all nursing; concerns such as weekend differential, clinical ladder, etc. We need to have a way to communicate these major issues to all the nurses. NSO can accomplish that if we have [an area] representative who is willing to participate. She pointed out that management needs to make a commitment to get these individuals here at these meetings. This can be accomplished by prescheduling and seeing that these nurses get here to these meetings. Ms. Poisker stated that they have tried listening sessions, prescheduled meetings, etc., and the attendance is always poor. Ms. Poisker stated that in some instances it is more important to get the concerns directly from the staff [nurses] instead of having them filtered through management.⁴

It appears that at some time around January 1990,⁵ the Union began an organizational effort at the Hospital. Jeffrey Corrigan, vice president for human resources, testified that he became aware of this effort in January, although Poisker testified that she did not learn of any union activity until February 1990. In any event, on January 9, the operating room of nurses, dissatisfied with their working conditions, staged a job action to protest various conditions of their employment, including wages, overtime, and staffing. Also in January, the Union filed petitions for elections in two units, a unit for all professional employees and a second unit for all technical employees. An election was held in the professional unit on April 26, which the Union lost.

Another event that occurred in January, after the job action, was an open meeting of the NSO on January 16. This meeting was attended by some 35 to 40 NSO members, as well as Poisker, who attended most NSO meetings. It was a disorderly meeting with employees voicing their complaints. The regular agenda format for this meeting was not followed. At this meeting Susan Steelman, who was president of the NSO at that time, spoke about restructuring the NSO to meet the concerns of the staff nurses. Poisker also spoke at this meeting. According to registered nurse Melody Higgins, Poisker told those present that she wanted to hear about their problems, and thereafter ensued a question and answer period between those nurses present and Poisker dealing with employment problems such as wages, insurance benefits, and weekend scheduling. Poisker testified:

If you want to talk about the January 1990 meeting of NSO, if they gave me concerns that I could rectify then, I would of rectified them then. We did not have any union activity at that point that I was aware of. If someone said, I've got a problem with my schedule, I would of said, fine I'll let your manager know that.

On February 26, a letter was distributed to the nursing staff from Poisker wherein Poisker sympathized with the "frustration and concern" of the nursing staff over various conditions of their employment, including "salaries, bene-

fits." In this letter, Poisker recites the following as actions we have taken to begin to address the major areas of concern:

1. *Decision making.* Last fall we began a reorganization of the NSO to better utilize it as a means for active problem solving and decision making regarding nursing department policies, practice issues and projects (e.g. career paths, shared governance, clinical ladder, budget process). This change was agreed upon in the November NSO meeting and was targeted to be put into effect for the January NSO meeting. I am confident that with the *support* of all and *participation* of dedicated representatives from each area, we will have a means to affect change and involve staff in decision making.

The memo also advised the nursing staff that consultants had been hired by the Respondent to examine "our entire compensation package including benefits." The memo also recites, in pertinent part:

As you may know, Personnel is also planning a benefits survey so that they will be sure to know what the priorities should be for consideration in this next budget year. Personnel's survey will be completed in March; a consultant's recommendation will be available for planning for the upcoming fiscal year.

On February 27, another NSO meeting was held. The meeting was conducted by Susan Steelman, president, and attended by Poisker. The minutes of the meeting reflect the solicitation of a benefits survey by Jeff Corrigan, vice president for human resources, and read, in pertinent part:

Ms. Steelman introduced Mr. Jeff Corrigan who was present to introduce a benefits survey. The remainder of the meeting was occupied in completing the survey.

Corrigan testified that management "had designed a survey to get some information regarding employee preferences on benefit enhancements and their feelings about a couple of trade-offs on benefits that we were considering or looking at." Poisker testified that the purpose of the benefits survey was "really to ascertain how we could best provide a menu of benefits that most employees would be satisfied with. What else they'd like to see that we didn't have then." The survey was distributed to about 1100 employees at some 60 meetings. At the NSO meeting, as with the other meetings, the survey was explained, distributed, filled out, and collected at the same meetings.

On March 20, the monthly executive committee NSO meeting was held, attended by about 19 area representatives as well as Poisker.⁶ At this meeting, it was decided by those area representatives present that the area representatives would have the representatives speak for and report back to their respective areas. The minutes of the March 20, 1990

⁴NSO meetings were held on Hospital premises during work hours. The minutes of all NSO meetings were taken and typed up by Vicky Friedman for distribution. Friedman is the secretary to the nursing administration office, headed by Poisker.

⁵All dates refer to 1990 unless otherwise indicated.

⁶The NSO bylaws provide for monthly NSO meetings attended by a staff nurse representative from each of the various nursing areas. It appears that the manner of selecting these representatives varied, but as Poisker testified, at least some were appointed by management.

meeting provide an insight into the nature of the NSO and are set out here in their entirety.

EXECUTIVE NURSING SERVICE ORGANIZATION

March 20, 1990

PRESENT:

Isabelle White, PEDS	Dot Ridgeway, Endo
Charlotte Brown, Cent. Proc.	Christine Cannon, Vas. Lab.
Mary Kay Benn, Cath Lab	Susan Collins, 2E
Tana Miles, 4EA	Jo Washburn, 4EB
Mary Beth Thomas, Ann King, OPS	5W Laura Crum, CCU
Joyce Lecates, 3WA	Susan Matthews, Card. Rehab
Jo Ann Lewis, 2W	Bert Williams, 4W
Dale Twilley, OR	June Elliott, Qual. Rev.
Susan Steelman, 3WA	Carolyn Wootten, 5W
	Karen C. Poisker, V.P. for Nursing

ABSENT:

Linda Hooker, 5EC	Joyce Harrison, 3E
Pat Raith, 2E	Sherri Carrow, MNU
Gary Dowdena, 5E	Jan Schaffner, ICU
Dawn Lietchy, L & D	Cathy Hurley, PACU

I. CALL TO ORDER

The meeting was called to order at 9:07 a.m. by Susan Steelman, Chairperson.

II. GOALS AND OBJECTIVES

After much discussion re: the decision to reorganize NSO it was decided that:

ACTION:

IT WAS THE CONCENSUS [SIC] OF THE GROUP THAT THE REGULAR MONTHLY MEETING SHOULD CONSIST OF ONLY THE REPRESENTATIVES FROM EACH AREA. THIS WOULD LIMIT THE GROUP TO ONE THAT COULD EXPECT TO ACTIVELY PROBLEM SOLVE.

Area representatives have the responsibility to speak for and report back to their respective areas.

ACTION:

MOTION WAS MADE, SECONDED, AND CARRIED THAT THERE SHOULD BE A QUARTERLY MEETING OPEN TO ALL NURSING FOR OPEN DISCUSSION.

It was discussed that the organization should have two co-chairpersons because of it being such a large group. Discussion ensued.

ACTION:

MOTION WAS MADE, SECONDED, AND CARRIED FOR THE CO-CHAIRPERSONS TO BE SUSAN MATTHEWS, CARIAC [SIC] REHAB, AND JAN SCHAFFNER, ICU.

It was decided that each co-chairperson will contact each of the 26 representatives to discuss and agree upon what the agenda will be for the regular NSO meeting.

II. BY-LAWS

Discussion of the need for By-Laws or some other organizational structure occurred. Mrs. Poisker volunteered to contact North Arundel Hospital to see if it would be willing to share their organization's By-Laws.

ACTION:

THE FOLLOWING INDIVIDUALS VOLUNTEERED TO BE ON THE BY-LAWS COMMITTEE: JOYCE LECATES, JUNE ELLIOTT, LAURA CRUM, CHRIS CANNON, SUSAN STEELMAN, AND KAREN POISKER.

III. BOARD REPRESENTATION

ACTION:

MOTION WAS MADE, SECONDED, AND CARRIED THAT THE TWO CO-CHAIRPERSONS WILL REPORT IN THE JOINT CONFERENCE COMMITTEE OF THE BOARD OF TRUSTEES QUARTERLY.

IV. EDUCATIONAL SEMINAR

Some of the representatives said that they felt that they did not understand the structure of the Board, its role or its functions and how decisions are made for the hospital.

ACTION:

IT WAS DECIDED THAT KAREN C. POISKER PRESENT AN EDUCATIONAL SEMINAR ON THE ROLE AND FUNCTION OF THE BOARD. SOMETIME IN THE NEAR FUTURE, PROBABLY FOLLOWING THE RESOLUTION OF TESTIMONY ON PROFESSIONAL AND TECHNICAL VOTING UNITS.

V. AGENDA

Discussion ensued.

ACTION:

THE AGENDA WAS DECIDED UPON FOR THE NEXT MEETING BY THE REPRESENTATIVES.

VI. ADJOURNMENT

The meeting was adjourned at 10:10 a.m. by Susan Steelman, Chairperson.

At the March 27 quarterly open meeting of the NSO, with respect to the matter of drafting new Bylaws for the NSO, the minutes recite:

VI. Bylaws

Ms. Matthews discussed the setting up of new bylaws for NSO and informed the group that Karen Poisker would be serving on the committee as an advisor and Susan Steelman would also be serving on the committee as a consultant.

The minutes also recite that:

Ms. Jan Schaffner stated that she sees NSO as an advocate for nursing where suggestions, complaints, etc., can be discussed and that she feels that NSO will become a bridge between nurses and nurses management.

A communication dated April 1990, captioned "NSO UPDATE" and signed by co-chairs Matthews and Schaffner, read, in pertinent part:

There have been some recent changes in the NSO structure and philosophy. The ground work for these changes was set November 20, 1989. The goal is to increase nursing participation in NSO and to see NSO as a vehicle to affect change, serve as an advocate for nursing and become a bridge between nurses and nursing management.

By memo dated April 11, Matthews and Schaffner solicited NSO area representatives to participate in a survey to determine what the problems were with the working conditions of the nursing staff. It reads:

Please remit your concerns or problems to Susan Matthews, cardiac rehab, or Jan Schaffner, ICU, so that they may prioritize and set the agenda for the NSO area rep meeting on April 24, 1990.⁷

Please remit these items to them by Monday afternoon.

Having received responses to these solicitations, which clearly concern primarily matters of wages, hours, and terms and conditions of employment, it appears that at the April 24 meeting, these issues were presented to the group by Matthews, utilizing a flip chart listing the individual items. The minutes of that meeting state, *inter alia*:

Mrs. Matthews reviewed a list of ideas and concerns that were generated from the area reps. Some of these ideas will need to be prioritized by the Recruitment and Retention Committee (see attached list).⁸

At the NSO meeting on October 23, the above list of concerns raised by the area survey and presented to the April 24 meeting was "updated." Those matters, relating almost exclusively to working conditions of one kind or another, were discussed among those present, with Poisker responding to the various complaints.

Many of those complaints raised at the April 24 meeting had been rectified by management between April 24 and the October 23 meeting. Others were still under consideration or had been rejected. When Matthews was questioned as to why these matters, which clearly concerned working conditions, were reviewed, the record reflects the following exchange:

JUDGE DONNELLY: All right. Let me ask you this. At the October meeting we got—well, first of all, we have the April 24 meeting and this was meeting at which you set out on a flip board the responses that you got, nursing concerns?

WITNESS: Yes, sir.

JUDGE DONNELLY: And then in the October meeting—I'm referring to the Minutes. We've got Updating Nurses Concerns. Ms. Poisker circulated copies of the nursing concerns to the group, reviewed the items," and so forth. They go down the line with those items, right?

⁷The election in the professional unit was held on April 26, as noted above.

⁸Attached to the minutes is a numbered itemization of some 23 "Nurses Concerns" dealing almost exclusively with dissatisfaction about wages, hours, and other terms and conditions of employment.

WITNESS: Yes, sir.

JUDGE DONNELLY: Now, your testimony has been that the NSO did not exist for dealing with that type of concern? Is that correct?

WITNESS: Yes, sir.

JUDGE DONNELLY: Can I ask you why they were raised, discussed, brought up these various—at least two meetings. You have the one on the 9th—excuse me, you have the one in April, April 24, and again on October 23 and they were gone over and reviewed. What was the purpose of that if the NSO served no function in that regard?

WITNESS: In our request for the nursing concerns and problems we received those issues sent to us along with others that were nurse practice related. After having received them, it was necessary to do something with them. Therefore, we made—we felt that what we had done was we made management aware that these concerns were there. That was all. We did not expect to address those in terms of a solution for them because we could not do that. We were more concerned with the nurse practice issues, but the other issues that had surfaced we had to take them somewhere and—

JUDGE DONNELLY: Management was the only one who could change the shift hours? Management was the only one—management is the only one who's going to be able to change—to increase money for shift differentials?

WITNESS: Exactly.

JUDGE DONNELLY: Or to change overtime—the overtime hours and all of those other concerns?

WITNESS: Yes, sir.

JUDGE DONNELLY: Did you view it as a function of NSO to bring those matters to the attention of the people who could do something about it, namely the management?

WITNESS: Once they had been delivered to us and sent to us, even if that wasn't what we had looked to receive, we felt that it was best for us to send them on for someone to address them and that was all.

JUDGE DONNELLY: Okay.

The minutes of the October 23 meeting set forth the following remarks by Poisker:

Ms. Poisker summarized the discussion by circulating a summary of the NSO's Nurse's Concerns categorized as those implemented, not implemented, but under consideration. Not implemented and not under consideration, and those that required further information (see attached). Karen also stated that she kept hearing "nothing had changed" and considering all these changes plus clinical ladder, acuity, pension, per diem, and those that NSO had made, she felt that perhaps that was due to limited changes in day to day things on nursing areas. Since it is important to know what concerns and issues are on units, so that we can address those we can do something about, Ms. Poisker asked the group to complete a survey (see attached) that requested information on 4 issues for the area and 2 changes that could make an immediate positive impact. Ms. Poisker stated that we are committed to making positive changes and that she would like to share the

results of this survey with NSO. She also informed the group that Nurse Managers would be working with solving some of the issues that the survey identified.

The minutes of the October 23 meeting also reflect that the newly formulated NSO bylaws were "shared with" Respondent's board of trustees by NSO co-chairs Matthews and Schaffner and "formally approved."

B. Discussions and Analysis

There are two basic issues to be resolved in this case. First is whether the NSO was a labor organization. The second, assuming that it is a labor organization, is whether Respondent dominated or interfered with its formation or administration.

As to the issue of labor organization, Section 2(5) of the Act defines a "labor organization" as "any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work." The probative evidence in this record makes it clear that the NSO is a labor organization. At its inception, the NSO may have been a social organization designed to provide amenities or address social concerns not related to the working conditions of the nurses. However, whatever its origins may have been, the nature of the NSO changed in late 1989 and early 1990 when it began to address issues that clearly concerned working conditions. For example, the co-chairs of the NSO, Schaffner and Matthews, conducted a survey of the area representatives to the NSO to identify problem areas in working conditions. The results of this survey were presented at the NSO meeting on April 24. As set out in the minutes of that meeting, the survey results disclose a litany of work-related items that were causing dissatisfaction among the nursing staff. Surely, there was a purpose in conducting the survey, and that purpose must have contemplated the involvement of management, since management alone was in the position to remedy perceived inequities. The fact is that management was involved. Specifically, the record discloses that Poisker, vice president for nursing and a member of Respondent's executive staff which set corporate policy and established Hospital budgets, was also, and at the same time, not only a member of the NSO, but also a member of the NSO executive committee, a committee involved in establishing agendas for the NSO meetings, and an active member of and advisor to the bylaws committee of the NSO which formulated a new set of bylaws to govern the NSO. Clearly, Poisker was actively involved in the affairs of the NSO and particularly prominent in the reorganization and restructuring of the NSO. The record also discloses that she was fully engaged in the matter of accepting and rectifying, where possible, complaints by the nurses about their working conditions. Any dealings that the NSO had with Poisker concerning dissatisfaction with working conditions is tantamount to dealing with the Respondent on those matters.

In addition, it appears that the NSO adopted a policy of having its co-chairs report to the Hospital board of trustees. This was done with the new NSO bylaws which were "shared with" and "formally approved" by the board of trustees. The record includes numerous other examples which

illustrates the nature and purpose of the NSO, and based on the facts recited above, and the entire record, especially the minutes of the various NSO meetings, there can be little doubt that the NSO, whatever its origins may have been, clearly became an organization dealing with the Employer concerning working conditions within the meaning of Section 2(5) of the Act.

Having concluded that the NSO is a labor organization, there remains for consideration whether Respondent dominated or interfered with the formation or administration of the NSO or contributed financial or other support to it in violation of Section 8(a)(2) of the Act.⁹

First, let us examine the role played by Poisker in the affairs of the NSO. As noted above, Poisker was vice president for nursing and a member of the Hospital executive staff which was responsible, inter alia, for funding the operation of the Hospital. At the same time, she was active in the reorganization of the NSO into the labor organization which subsequently evolved. She was an active participant in affecting fundamental changes in the NSO. She was a member of the executive committee of the NSO and took part in establishing agendas for NSO meetings. She was an active member of the NSO bylaws committee, a consultant and actor in formulating new NSO bylaws, which were eventually approved by the Hospital board of trustees. Poisker was also involved in discussing, responding to, and resolving a whole array of work-related issues such as overtime scheduling, vacation, wages, shift differential, and sick leave, all within the NSO, and did so in a leadership role at NSO meetings.

A complete reading of the record convinces me that Poisker was not only a compelling active vocal force within the NSO, but was in fact the dominant force in restructuring the NSO as a labor organization. Such activity constitutes domination and interference in the affairs of the NSO.¹⁰

In addition to the direct participation in NSO affairs set out above, the NSO meetings were conducted on Respondent's premises, and on its time. The annual budget \$500 budget of the NSO was funded by management as a nursing department budget item. Additional support was afforded to the NSO by management in the form of secretarial assistance provided to the NSO by the Hospital's nursing department whose secretary took the notes and typed of the minutes of the NSO meetings for distribution.

Based on the foregoing, I am satisfied not only that the NSO is a labor organization, but also that its affairs are dominated and interfered with by Respondent.¹¹ *NLRB v. Cabot Carbon Co.*, 360 U.S. 203 (1959); *St. Vincent's Hospital*, 244 NLRB 84 (1979).

⁹Sec. 8(a)(2) makes it an unfair labor practice for an employer "to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it."

¹⁰Respondent also appointed at least some of the area representatives within the NSO, and this too was interference in the internal affairs of the NSO.

¹¹The complaint alleges that on or about March 27 and April 24, Poisker solicited grievances from employees and promised to attempt to rectify them. However, the record is factually insufficient to support these allegations.

V. THE EFFECT OF THE UNFAIR LABOR PRACTICES ON COMMERCE

The activities of Respondent set forth in section III, above, occurring in connection with Respondent's operations described in section I, above, have a close and intimate relationship to traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE REMEDY

Having concluded that Respondent has unlawfully dominated and interfered with the reorganization and administration of a labor organization, the NSO, I shall recommend that it completely disestablish and withdraw all support from the NSO.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Sections 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. The NSO is a labor organization within the meaning of Section 2(5) of the Act.
4. By dominating, assisting, and supporting the NSO, Respondent has been, and is, violating Section 8(a)(1) and (2) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹²

ORDER

The Respondent, Peninsula General Hospital Medical Center, Salisbury, Maryland, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Dominating, assisting, or contributing financial or other support to the NSO or any other labor organization.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

¹²If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Withdraw all financial or other support from and completely disestablish the NSO.

(b) Post at its facility in Salisbury, Maryland, copies of the attached notice marked "Appendix."¹³ Copies of the notice, on forms provided by the Regional Director for Region 5, after being signed by Respondent's authorized representative, shall be posted by it immediately on receipt and maintained for 60 consecutive days in conspicuous places, including places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for in writing within 20 days from the date of this Order what steps have been taken to comply.

¹³If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT dominate, assist, or contribute financial or other support to the NSO or any other labor organization.

WE WILL NOT in any like or related manner interfere, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL withdraw all financial or other support from and completely disestablish the NSO.

PENINSULA GENERAL HOSPITAL MEDICAL
CENTER